

# **CALIFORNIA BOARD OF ACCOUNTANCY REGULATIONS**

## **CALIFORNIA CODE OF REGULATIONS TITLE 16. Professional and Vocational Regulations DIVISION 1. Board of Accountancy Regulations**

### **ARTICLE 12.5. CITATIONS AND FINES**

(Sections 95 - 95.6)

#### **Section 95. Citations.**

(a) The executive officer of the board, in lieu of filing an accusation seeking the suspension or revocation of any permit or certificate or the censure of the holder of any such permit or certificate pursuant to Sections 5100, 5101 and 5156 of the Business and Professions Code, may issue a citation to any person as defined in Section 5035 of the Business and Professions Code who holds a permit or certificate from the board for a violation of any provision of the Accountancy Act or any regulation adopted by the board.

(b) In his or her discretion, the Board's executive officer may issue a citation under this section to a licensee for a violation of a term or condition contained in a decision placing that licensee on probation.

NOTE: Authority cited: Sections 125.9 and 5010, Business and Professions Code.

Reference: Sections 125.9, Business and Professions Code.

#### **HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Change without regulatory effect amending Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).
3. Amendment designating first paragraph as subsection (a) and new subsection (b) filed 2-15-2008; operative 3-16-2008 (Register 2008, No. 7).

#### **Section 95.1. Citation Format.**

Each citation:

- (a) shall be in writing;
- (b) shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated;
- (c) may contain an assessment of an administrative fine, an order of correction or abatement fixing a reasonable period of time for correction or abatement of the violation, or both an administrative fine and an order of correction or abatement;
- (d) shall be served in accordance with the provisions of Section 11505 (c) of the Government Code;

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(e) shall inform the cited person that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 calendar days of the issuance of the citation or assessment.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9 and 148, Business and Professions Code.

### HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.

### Section 95.2. Fines.

The amount of the administrative fine assessed by the executive officer pursuant to this article shall not be less than \$100 or more than \$5,000 for each investigation.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9, 148 and 5100(g), Business and Professions Code.

### HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment of section filed 9-23-91; operative 10-23-91 (Register 91, No. 52).
3. Amendment filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
4. Amendment of section and Note filed 12-17-96; operative 1-1-97 pursuant to Government Code section 11343.4(d) (Register 96, No. 51).
5. Amendment filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).
6. Amendment filed 7-22-99; operative 8-21-99 (Register 99, No. 30).
7. Change without regulatory effect amending section and Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).
8. Editorial correction of second table (Register 2005, No. 47).
9. Repealer and new section filed 2-15-2008; operative 3-16-2008 (Register 2008, No. 7).

### Section 95.3. Citation Factors.

In assessing an administrative fine or issuing an order of correction or abatement, the executive officer of the board shall give due consideration to the following factors:

- (a) The gravity of the violation.
- (b) The good or bad faith of the cited person or entity.
- (c) The history of previous violations.
- (d) Evidence that the violation was or was not willful.

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(e) The extent to which the cited person or entity has cooperated with the board's investigation.

(f) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9, 148 and 5100(g), Business and Professions Code.

### HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.
3. Change without regulatory effect amending Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

### **Section 95.4. Failure to Comply with Order.**

The failure of a licensee to comply with a citation containing an assessment of administrative fine, an order of correction or abatement or both an administrative fine and an order of correction or abatement after this citation is final and has been served in accordance with the provisions of Section 11505(c) of the Government Code shall constitute a ground for revocation or suspension of the license or permit.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9, 148 and 5100(g), Business and Professions Code.

### HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.
3. Change without regulatory effect amending Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

### **Section 95.5. Appeals.**

Any person or entity served with a citation pursuant to this Article and Sections 125.9 and 148 of the Business and Professions Code may contest the citation by appealing to the board in writing within 30 calendar days of the issuance of the citation. The cited person or entity may contest any or all of the following aspects of the citation:

- (a) The occurrence of a violation of the Accountancy Act or a regulation adopted by the board.
- (b) The reasonableness of the order of correction or abatement.
- (c) The period of time allowed for correction in the order of correction or abatement.
- (d) The amount of the administrative fine.

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If the cited person or entity fails to notify the Board of his/her/its intent to contest the citation, the citation shall be deemed a final order of the Board and shall not be subject to administrative review.

If a cited person or entity notifies the Board that he/she/it intends to contest a citation, the Board shall afford an opportunity for a hearing. The Board shall thereafter issue a decision, based on findings of fact, affirming, modifying or vacating the citation or penalty or both, or directing other appropriate relief. The proceedings under this Section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (the California Administrative Procedure Act).

The failure of a cited person or entity who has appealed to the Board to appear at the time and place of the hearing shall be deemed a withdrawal of his, her or its appeal, and the citation shall constitute a final order of the Board and shall not be subject to administrative review.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9 and 148, Business and Professions Code.

### HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.

### **Section 95.6. Unlicensed, Unregulated Practice.**

The executive officer of the board may issue citations, in accordance with Section 125.9 and 148 of the Business and Professions Code, against any person defined in Business and Professions Code Section 5035 who is acting in the capacity of a licensee under the jurisdiction of the Board. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Administrative fines shall be in a range from \$100 to \$5,000 for each investigation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148, and 5010, Business and Professions Code.  
Reference: Sections 125.9, 148, 5050 and 5051, Business and Professions Code.

### HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment of section and Note filed 2-15-2008; operative 3-16-2008 (Register 2008, No. 7).